

COMMISSIONERS  
MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

ORIGINAL OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission  
**DOCKETED**

DATE: MARCH 20, 2007

MAR 20 2007

DOCKET NO: SW-04316A-06-0382

DOCKETED BY	ne
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TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc Stern. The recommendation has been filed in the form of an Opinion and Order on:

ENTRADA DEL ORO SEWER COMPANY  
(CC&N EXTENSION)

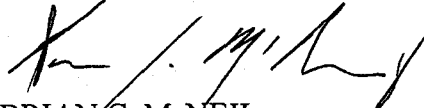
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MARCH 29, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

APRIL 11, 2007 and APRIL 12, 2007

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

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AZCORP COMMISSION  
DOCUMENT CONTROL

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 KRISTIN K. MAYES  
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF  
9 ENTRADA DEL ORO SEWER COMPANY FOR  
10 AN EXTENSION OF ITS CERTIFICATE OF  
11 CONVENIENCE AND NECESSITY FOR  
12 WASTEWATER SERVICES.

DOCKET NO. SW-04316A-06-0382

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

10 DATE OF HEARING: February 26, 2007

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

13 APPEARANCES: Mr. Michael W. Patten, ROSHKA, DEWULF &  
14 PATTEN, PLC, on behalf of Entrada Del Oro Sewer  
Company; and

15 Mr. Kevin Torrey, Staff Attorney, Legal Division, on  
16 behalf of the Utilities Division of the Arizona  
Corporation Commission.

17 **BY THE COMMISSION:**

18 On June 6, 2006, Entrada Del Oro Sewer Company ("Company" or "Applicant") filed with  
19 the Arizona Corporation Commission ("Commission") an application for an extension of its  
20 Certificate of Convenience and Necessity ("Certificate") to provide wastewater service to various  
21 parts of Pinal County, Arizona.

22 On July 7, 2006, pursuant to A.A.C. R14-2-610(c), the Commission's Utilities Division  
23 ("Staff") issued a notice of insufficiency to the Company that the application had not been deemed  
24 sufficient.

25 On November 13, 2006, Staff issued a letter of administrative completeness.

26 On November 30, 2006, the Commission issued a Procedural Order which set a hearing on the  
27 application for February 26, 2007. The Commission also ordered the Company to publish notice of  
28 the proceeding at least once in a newspaper of general circulation in its proposed service territory.

1 On January 26, 2007, Staff filed its Staff Report in this matter. No objections or comments  
2 were filed to the Staff Report.

3 On February 26, 2007, a full public hearing was convened before a duly authorized  
4 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Applicant and Staff  
5 appeared with counsel. At the conclusion of the hearing, the matter was taken under advisement  
6 pending submission of a Recommended Opinion and Order to the Commission.

7 \* \* \* \* \*

8 Having considered the entire record herein and being fully advised in the premises, the  
9 Commission finds, concludes, and orders that:

10 **FINDINGS OF FACT**

11 1. Pursuant to Decision No. 68306 (November 14, 2005), the Company is authorized to  
12 provide public wastewater service to an area approximately two and one-half miles northwest of  
13 Florence Junction in Pinal County, Arizona.

14 2. On June 6, 2006, the Company filed an application for an extension of its Certificate  
15 in order to provide sewer service to a 160 acre parcel of land approximately one and one-half miles  
16 south of the Company's certificated service area. The parcel is being developed by Rancho 160, LLC  
17 as a residential development, which area is more fully described in Exhibit A attached hereto, and  
18 incorporated herein by reference.

19 3. The Company projects having approximately 550 residential new connections in the  
20 extension area described in Exhibit A in five years. Plans also call for the construction of a school  
21 which will require wastewater service.

22 4. Residents of the subdivision will receive their water service from Arizona Water  
23 Company.

24 5. On November 8, 2006, the Company filed a copy of the Pinal County franchise for the  
25 extension area and a copy of a resolution which approves Applicant's 208 Plan amendment issued by  
26 the Central Arizona Association Governments ("CAAG") for the extension area.

27 6. On December 18, 2006, Applicant filed certification that it published notice of the  
28 application and the hearing thereon as ordered in the Commission's Procedural Order of November

1 30, 2006.

2 7. During the hearing, the Company's president, Charles Kennedy, requested that it be  
3 given until June 30, 2009 to file a copy of its Arizona Department of Environmental Quality  
4 ("ADEQ") Approval to Construct ("ATC") for the new lift station and main that will be used to  
5 provide service in the extension area because of a soft housing market which is slowing development.

6 8. According to the Company's president, the Company has invested approximately \$6  
7 million in its existing utility plant which has the capacity to treat up to 300,000 gallons of raw sewage  
8 per day. However, because the Company presently serves only approximately 90 to 100 customers, it  
9 lacks sufficient waste flows to treat its sewage and instead vaults and hauls its waste to another  
10 treatment facility. Mr. Kennedy indicated that, in approximately two months, the Company  
11 anticipates having sufficient waste flow to treat its own sewage as more customers are connected to  
12 the system.

13 9. The Company is planning for the expansion of its collection system at an estimated  
14 cost totaling approximately \$1.4 million to serve the extension area subject to a main extension  
15 agreement with the developer of the extension area.

16 10. Other than the sewage treatment facilities to be constructed by the Company, there are  
17 no public service corporations authorized to provide wastewater service in the area requested to be  
18 certificated herein.

19 11. Presently, the Company has no outstanding compliance issues with respect to the  
20 operation of a wastewater utility, as it is not actually treating any effluent.

21 12. Applicant is current on the payment of its taxes, and is in compliance with the  
22 Commission's rules and prior Orders.

23 13. Staff is recommending approval of the Company's application for the extension of its  
24 Certificate for the area described in Exhibit A. Additionally, Staff is recommending that the  
25 Commission condition the issuance of the extension of the Company's Certificate as follows:<sup>1</sup>

26

27

28 <sup>1</sup> Staff indicated during the hearing that the Company's November 8, 2006, filing of a copy of the CAAG  
resolution satisfied an earlier condition of its recommendations in the Staff Report.

1. that the Company charge its tariffed rates and charges in the extension area; and
2. that the Company file, by June 20, 2009, with Docket Control, as a compliance item in this docket, a copy of ADEQ's ATC.

14. Staff further recommends that the Commission's Decision granting the extension of the Certificate to the Company be null and void, after due process, if the Company fails to meet condition number two within the time specified.

15. Because an allowance for the property tax expense of Applicant is included in the Company's rates and will be collected from its customers, the Commission seeks assurances from the Company that any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the Commission's attention that a number of utility companies have been unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers, some for as many as twenty years. It is reasonable, therefore, that as a preventive measure, Applicant should annually file, as part of its annual report, an affidavit with the Utilities Division attesting that the company is current in paying its property taxes in Arizona.

16. Under the circumstances herein, we believe that the Company's application should be approved. We further find that Staff's additional recommendations should be adopted and complied with by the Company.

#### CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-252, 40-281 and 40-282.

2. The Commission has jurisdiction over the Company and of the subject matter of the application.

3. Notice of the Company's application as described herein was given in the manner prescribed by law.

4. The public convenience and necessity require and the public would benefit by the issuance to the Company of an extension of its Certificate to provide certificated sewer service to the area described in Exhibit A.

5. Applicant is a fit and proper entity to provide sewer service and to receive an extension of its Certificate which encompasses the area more fully described in Exhibit A.

6. The Company's application for an extension of its Certificate should be approved subject to Staff's recommendations and the Company's compliance with Findings of Fact Nos. 13 and 14.

**ORDER**

IT IS THEREFORE ORDERED that the application of Entrada Del Oro Sewer Company for an extension of its Certificate of Convenience and Necessity for the operation of sewage facilities in the area more fully described in Exhibit A be, and is hereby, approved provided that Entrada Del Oro Sewer Company complies with the conditions set forth in Findings of Fact Nos. 13.

IT IS FURTHER ORDERED that the Commission's Decision granting the extension of the Certificate of Convenience and Necessity to Entrada Del Oro Sewer Company for the area described in Exhibit A shall be null and void, after due process, if the Company fails to timely file, by June 30, 2009, with Docket Control, as a compliance item in this docket, a copy of its Approval to Construct documentation for the new lift station and main needed to serve the extension area.

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1 IT IS FURTHER ORDERED that Entrada Del Oro Sewer Company shall annually file as part  
2 of its annual report, an affidavit with the Utilities Division attesting that the Company is current in  
3 paying its property taxes in Arizona

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8 CHAIRMAN \_\_\_\_\_ COMMISSIONER

9  
10 COMMISSIONER \_\_\_\_\_ COMMISSIONER COMMISSIONER

11  
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
13 Director of the Arizona Corporation Commission, have  
14 hereunto set my hand and caused the official seal of the  
Commission to be affixed at the Capitol, in the City of Phoenix,  
this \_\_\_\_ day of \_\_\_\_\_, 2007.

15  
16 BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

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18 DISSENT \_\_\_\_\_

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20 DISSENT \_\_\_\_\_

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1 SERVICE LIST FOR: ENTRADA DEL ORO SEWER COMPANY

2 DOCKET NO.: SW-04316A-06-0382

3

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10 Ernest Johnson, Director  
11 Utilities Division  
12 ARIZONA CORPORATION COMMISSION  
13 1200 West Washington Street  
14 Phoenix, Arizona 85007

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## EXHIBIT A

LEGAL DESCRIPTION

THAT PORTION OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 10 AND THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 2 SOUTH, RANGE 10 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 6, BEING A 3 INCH PINAL COUNTY BRASS CAP STAMPED 1962 FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 6, BEING A 3 INCH PINAL COUNTY BRASS CAP STAMPED 1962 BEARS SOUTH  $00^{\circ}48'00''$  EAST, A DISTANCE OF 2654.73 FEET, SAID POINT BEING THE POINT OF BEGINNING.

THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 6, ALSO BEING THE CENTERLINE OF RANCH 160 BOULEVARD, SOUTH  $89^{\circ}39'15''$  WEST, A DISTANCE OF 1324.50 FEET TO THE EAST  $1/16^{\text{TH}}$  CORNER, A FOUND  $1/2$  INCH REBAR;

THENCE ALONG THE WEST LINE OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 6, NORTH  $00^{\circ}48'07''$  WEST, A DISTANCE OF 2656.74 FEET TO A FOUND  $1/2$  INCH REBAR AT THE CENTER-EAST  $1/16^{\text{TH}}$  CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 6;

THENCE NORTH  $89^{\circ}44'27''$  EAST ALONG THE EAST-WEST MID-SECTION LINE, A DISTANCE OF 1324.61 FEET TO A FOUND 3 INCH PINAL COUNTY BRASS CAP STAMPED 1962 AT THE EAST CORNER OF SAID SECTION 6;

THENCE NORTH  $89^{\circ}27'10''$  EAST ALONG THE NORTH LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 5 A DISTANCE OF 1327.27 FEET TO A FOUND  $3/4$  INCH PIPE AT THE CENTER-WEST  $1/16^{\text{TH}}$  CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 6;

THENCE SOUTH  $00^{\circ}47'37''$  EAST ALONG THE EAST LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 5, A DISTANCE OF 2654.99 FEET TO A FOUND  $1/2$  INCH REBAR WITH A TAG STAMPED LS 2217 AT THE WEST  $1/16^{\text{TH}}$  CORNER OF SAID SOUTHWEST QUARTER OF SECTION 5;

THENCE SOUTH  $89^{\circ}27'49''$  WEST ALONG THE SOUTH LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 5, ALSO BEING THE CENTERLINE OF RANCH 160 BOULEVARD, A DISTANCE OF 1325.98 TO THE SOUTHWEST CORNER OF SAID SECTION 5, SAID POINT BEING THE POINT OF BEGINNING;

CONTAINING 7,038,176 SQUARE FEET (161.57 ACRES) MORE OR LESS

EXCEPTING A PARCEL OF LAND SITUATED WITHIN THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 10 EAST OF THE GILA AND SALT

RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 6, SAID POINT BEING A BRASS CAP;

THENCE SOUTH  $89^{\circ}39'15''$  WEST ALONG THE SOUTH LINE OF SAID SECTION 6, A DISTANCE OF 220.63 FEET TO A POINT;

THENCE NORTH  $00^{\circ}01'45''$  WEST, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING NORTH  $00^{\circ}01'45''$  WEST, A DISTANCE OF 99.44 FEET TO A POINT ON A 50 FOOT RADIUS OF NON-TANGENT CURVE, CONCAVE TO THE NORTHWEST, WHOSE RADIAL BEARING IS NORTH  $20^{\circ}39'23''$  EAST;

THENCE EASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF  $104^{\circ}47'58''$ , A DISTANCE OF 91.45' TO A POINT;

THENCE SOUTH  $84^{\circ}08'35''$  EAST, A DISTANCE OF 101.34 FEET TO A POINT 50.00 FEET WEST OF THE EAST LINE OF SECTION 6;

THENCE SOUTH  $00^{\circ}48'00''$  EAST, A DISTANCE OF 129.77 FEET, RUNNING 50.00 FEET WEST AND PARALLEL WITH THE EAST LINE OF SAID SECTION 6 TO A POINT LYING 50.00 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 6;

THENCE SOUTH  $89^{\circ}39'15''$  WEST, A DISTANCE OF 169.96 FEET, RUNNING 50.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SECTION 6 TO THE POINT OF BEGINNING;

EXCEPTING ALL URANIUM, THORIUM OR OTHER MATERIALS WHICH ARE OR MAY BE DETERMINED TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS, AS RESERVED IN THE PATENT TO THE LAND.

ALSO, EXCEPTING A PARCEL OF LAND SITUATED WITHIN THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 2 SOUTH, RANGE 10 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 5, SAID POINT BEING A BRASS CAP;

THENCE NORTH  $89^{\circ}27'49''$  EAST ALONG THE SOUTH LINE OF SAID SECTION 5, A DISTANCE OF 1207.43 FEET TO A POINT;

THENCE NORTH  $00^{\circ}32'11''$  WEST, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING NORTH  $00^{\circ}32'11''$  WEST, A DISTANCE OF 131.55 FEET TO A POINT;

THENCE NORTH 89°27'49" EAST, A DISTANCE OF 117.73 FEET TO A POINT;

THENCE SOUTH 00°47'37" EAST, A DISTANCE OF 131.55 FEET TO A POINT  
LYING 50.00 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 5;

THENCE SOUTH 89°27'49" WEST, A DISTANCE OF 118.33 FEET, RUNNING 50.00  
FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SECTION 5 TO  
THE POINT OF BEGINNING;

EXCEPTING ALL URANIUM, THORIUM OR OTHER MATERIALS WHICH ARE OR  
MAY BE DETERMINED TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION  
OF FISSIONABLE MATERIALS, AS RESERVED IN THE PATENT TO THE LAND.